IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1737 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LUNAWADA MUNICIPALITY

Versus

SALIM ABDUL REHMAN PATHAN C/O SAHEB ELECTRIC STORES

Appearance:

MR BC DAVE for Petitioner

MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/04/2000

ORAL JUDGEMENT

Learned advocate Mr. B.C.Dave is appearing for the petitioner. Learned advocate Mr. D.R.Dave is appearing for the respondent workman. Todoay, with the consent of the learned advocates for the parties, the

matter has been taken up for final hearing.

In the present petition, the petitioner has challenged the award passed by the labour court Godhara in Reference No. 100 of 1987 (Newly numbered as 130 of 1990) dated 27th October, 1998. Under the said impugned judgment and award, the labour court has directed the petitioner to reinstate the respondent workman in service with continuity of service and 50% of the back wages for the intervening period.

This Court, while admitting this petition, has also issued notice as to interim relief and has also granted ad interim relief in terms of paragraph 8(b) of the petition.

Learned advocate Mr. B.C.Dave appearing for the petitioner has submitted that the respondent was working as Fire Fighter Driver for more than four years and his service was terminated in the month of July, 1986 and, therefore, said action of termination of his services was challenged by the respondent before the labour court, Godhra by filing the aforesaid reference which came to be allowed in absence of the petitioner. He has submitted that there were some reasons for the petitioner for not attending the proceedings before the labour court and, therefore, the impugned award should be quashed. On the other hand, learned advocate Mr. D.R.Dave appearing for the respondent workman has submitted that the respondent is not claiming back wages as awarded by the labour court and is prepared to forego the back wages provided the reinstatement is confirmed by this court. Before the labour court, there was evidence to the effect that the respondent has worked continuously for a period of four years from 983 to 1986 without break and he has completed 240 days' continuous service within 12 months preceding the date of termination. That fact has been proved by the respondent before the labour court by producing documentary evidence and also by adducing oral evidence. Thus, according to the findings of fact recorded by the labour court, the respondent workman has completed in all 550 days' continuous service from1983 to 1986. It should be noted that the said findings of fact have not been disputed by the petitioner and, therefore, considering these facts and circumstances of the case and the findings of fact recorded by the labour court based on the evidence before it, I am of the opinion that the award of reinstatement of the respondent workman cannot be disturbed by this court and I am also of the opinion that the labour court has not committed any error in passing award of reinstatement of service with continuity

of service of the respondent workman. Therefore, on the basis of the concession given by Mr. Dave, learned advocate for the respondent workman, the impugned award, in so far as it relates to grant of 50% of the back wages, same is quashed and set aside and the impugned award is confirmed in so far as it relates to reinstatement of the respondent with continuity of service. Thus, the impugned award of the labour shall stand modified as under:

The petitioner is directed to reinstate the respondent workman in service with continuity of service and without back wages for the intervening period within three weeks from today and also pay full wages from the date of the impugned award 27th October, 1998 till the date of actual reinstatement of the respondent workman within six weeks from today. Subject to these directions and modification in the impugned award, this petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs.

20.4.2000. (H.K.Rathod,J.)

Vyas